JOB WORK UNDER CENTRAL EXCISE

-By CA Madhukar N Hiregange

Job work is one of the important aspects that a manufacturer registered under Central Excise should be familiar with not just because it enables him to plan his processes in order to optimise the benefits available under the Central Excise Act, 1944 but would also enable him to cut costs on his manufacturing. This is so as the processes which pose problems or which are not cost effective at his end [due to economies of scale] can be sub-contracted or delegated to another manufacturer or processor who is referred to here as the job worker. Many a time, the job worker may be more efficient both in terms of the quality and cost as compared to the main manufacturer due to pursuance of core competencies. Most of the big manufacturers in fact make very good use of this concept and assign processes to more than one vendor which enables them to cut down on manufacturing costs.

In the context of the Central Excise law, job work has been defined under Rule 2(n) of the Cenvat Credit Rules, 2004 to mean processing or working upon of raw material or semi-finished goods supplied to the job worker, so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for aforesaid process and the expression “job worker” shall be construed accordingly. It is vital to note here that the process undertaken by the job worker on the goods that are supplied to him for job work, may or may not amount to manufacture.

If one were to go by the definition of the term “job work”, it is evident the raw materials have to be supplied by another person. In Prestige Engineering India Ltd v CCE Meerut, (1994 (09) LCX 0110), the Supreme Court held that when the job worker contributed his own material to the goods supplied by the customer and engaged in manufacturing, the activity was not one of job work. However, minor additions by the job worker would not take away the fact that the activity was one of job work.

Job Work and Manufacturing

Since excise duty is on ‘manufacture’, duty liability arises only when the goods are manufactured during job work. The test as to whether the process amounts to manufacture or not would be determined by analyzing whether a new article having a distinctive name, character or use emerges or not from thesaid process in accordance with the decision of the Honorable Supreme Court in Delhi Cloth and General Mills Co. Ltd Vs UOI (1962(10) LCX

0001). Where the goods are manufactured during job work, the job worker would be liable to pay duty of excise on the goods so manufactured unless the principal manufacturer who has supplied him the goods for job work, furnishes a declaration under Notification 214/86 dated 25.03.1986 which exempts goods manufactured by a job worker from duty of excise provided the said goods after job work are returned to the principal or cleared for export or cleared for home consumption on payment of duty of excise. Where the goods are returned to the principal, the principal should either clear it on payment of duty or use it in his manufacturing process which should result in a dutiable product being manufactured. The declaration as stated above should be given to the Assistant Commissioner of Central Excise who has jurisdiction over the factory of the job worker.

Job work & SSI exemption

Notification 214/86 CE (NT) has another significance and that is where the job worker also avails the benefit of notification 8/2003 CE (NT) dated 01.03.2003, the job work done under this notification would not be included for the purpose of determining whether or not his turnover has exceeded the said limit of Rs. 150 lakhs for the purpose of determining duty liability if any or Rs. 400 lakhs for the purpose of determining eligibility to exemption u/n 8/2003 CE in the subsequent financial year. If working under this notification then job work done of even 10 crores would not be subjected to duty of excise in the hands of the job worker.

Job work – Central Excise v Service Tax

Where the processing undertaken by the job worker does not amount to manufacture, the said job worker would be liable to service tax even under the new regime of service tax. The liability in terms of job work can arise where the processing is done for the client. However one should note that where the processing amounts to manufacture, the same would not be taxable under service tax as the same has been specifically included in the negative list and the liability if any would have to be studied under Central Excise. The entry in the negative list reads as ‘any process amounting to manufacture or production of goods’. Therefore, the criteria is whether the process undertaken by the job worker amounts to manufacture or production or not. If the process amounts to manufacture, but the final product is either exempted by virtue of any notification or is nil rated, even then the said activity will be exempted under the new regime as the criteria is that the process undertaken by the job worker should amount to manufacturer production of goods which has been fulfilled.

Where the job work does not amount to manufacture it would amount to a service and unless exempted would be liable to service tax.

Job work & Cenvat Credit

Cenvat credit can be availed on materials sent for job work as per rule 4(5)(a) of the Cenvat Credit Rules, 2004. It has to be established from the records, challans or memos or any other document produced by the manufacturer taking the Cenvat credit that the goods have been received back in the factory within one hundred and eighty days or two years (w.e.f.1.03.2015 increase the time limit for return of capital goods from a job worker from the present six months to two years) as the case may be of goods being sent to the job worker. As per Rule 4(5)(a) of Cenvat Credit Rules (amended in budget 2015-16) 2004,*the Cenvat credit can be allowed in respect of receipt of inputs /capital goods directly by job worker when such goods are sent directly on direction of manufacturer or the provider of output service*.

In case the goods are sent to job worker premises without first receiving into factory by manufacturer, then 180 days or 2 years as the case may be shall be counted from date of receipt of goods by job worker.

Therefore maintenance of proper inventory accounting records, job work register, details of nature of processing undertaken and quantities received back along with scrap generated would gain importance. The movement should be under a challan giving the particulars as to the Rule under which the same is being sent. The challan would be in triplicate with two copies of the same accompanying the goods to the job worker who would return one copy with the goods being sent back to the principal after completion of the process. Where the goods are sent back in lots, he is free to send his own delivery challan with the goods and send back the original delivery challan received from the principal, with the final consignment being sent to the said principal.

If the inputs or the capital goods are not received back within one hundred and eighty days or two years respectively, the manufacturer shall pay an amount equivalent to the Cenvat credit attributable to the inputs or capital goods by debiting the Cenvat credit account with the amount so attributable to the inputs or capital goods not received. But the manufacturer can take once again the Cenvat credit so debited when the inputs or capital goods are received back in his factory.

Exception: The Cenvat credit shall also be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to another manufacturer for the production of goods or to a job worker for the production of goods on his behalf and according to his specifications. The restriction with regard to the requirement of receiving the goods back within 180 days/ 2 years from the date of sending would not apply to such tools, dies, fixtures and moulds.

Inputs sent to job work, could be sent to directly from job worker premises to another job worker premises for further processing without reversal of credit. In effect there is no requirement of reversal where goods reach the factory or premises of service provider within 180 days from date of removal to the first job worker.

Can more than one job worker be involved?

Yes. It is possible for a principal to send the goods to one job worker who does part of the process required and then forwards the goods to another job worker who does the remainder of the process. In this case, the first job worker can send the goods to the second job worker under his own delivery challan along with the copy of the challan received from the principal. The second job worker would then send back a copy of the challan received from the first job worker back to him and the copy of the original challan of the principal to him with his own challan. The period of 180 days or 2 years would be reckoned from the date of sending of the goods by the principal to the first job worker.

Can the goods be sent to the job worker's premises directly from the supplier's premises?

Yes. The principal manufacturer/raw material supplier can also ask his supplier to despatch the materials directly to the job worker's factory without receiving it at his factory. The principal manufacturer would be entitled to claim Cenvat credit on his purchases only when the processed materials are received at his factory from the job worker's premises.However w.e.f. 1stMarch 2015 the Cenvat credit provisions are amended to provide for permitting the credit of such invoices as soon as the goods are received at job worker’s premises. For this, the supplier would have to ensure that his invoice mentions the job worker as the consignee and the principal manufacturer as the buyer. In case the finished products are directly dispatched from the job workers premises under permission under Rule 4 (6) then the credit of inputs would be available at that time.

Can the goods processed or manufactured by the principal be sent to another premises for a process not amounting to manufacture?

Yes. Rule 16C of Central Excise Rules 2002 allows a manufacturer to send the manufactured goods other than prototypes, to another premises for any process not amounting to manufacture, without payment of duty, with the permission of CCE. The goods can either be received back or cleared from the other premises on payment of duty or cleared for export. The other premises being referred here may or may not be registered. Where semi-finished goods are to be sent, the permission would have to be obtained from the CCE u/r 16B. Semi-finished goods can be manufactured at such other premises and

cleared for export or on payment of duty for home consumption only when the other premises is registered under Central Excise. Goods manufactured in the other premises can also be received back into the factory of the principal.

Who is responsible for payment of duty on the Scrap Generated at the Job worker's premises?

The principal manufacturer is responsible for the duty payment on the scrap generated at the job worker's premises. The job worker may also remove such scrap on payment of appropriate duty of excise and in such case principal manufacturer will be relieved from his duty liability. Otherwise the scrap may be removed by the job worker to the principal manufacturer, who can discharge his excise duty liability by treating such scrap at par with any other scrap generated during the production process in his premises.

Can a manufacturer availing the benefit of SSI exemption under Central Excise send goods for job work?

Yes. The SSI manufacturer may note that two notifications have been issued under Central Excise – 83/1994 CE dated 11.04.1994 and 84/1994 CE dated 11.04.1994 which allows him to send goods to the job worker for job work and enables the job worker to clear the processed goods to the factory of the said manufacturer without payment of duty. The principal manufacturer in this case would have to give a declaration in this regard to the authorities having jurisdiction over the job worker's factory regarding the usage of the processed goods for manufacturing the goods enjoying exemption under notification 8/2003 CE. The aforesaid two notifications would come into play where the goods involved are those which are covered under the SSI exemption notification 8/2003 CE and the said exemption is being availed by the principal manufacturer. For the purpose of determining the limits of Rs. 400 lakhs or Rs. 150 lakhs under notification 8/2003 CE, the treatment of the clearances under these two notifications is similar to that under notification 214/86 CE.

Valuation issues in job work

One of the common issues confronting job workers paying duty of excise is that of valuation. Until recently the valuation had been in accordance with the decision of the Honorable Supreme Court in Ujagar Prints Ltd Vs Union of India (1989 (01) LCX0047) where the assessable value for the purpose of charging excise duty was said to comprise the value of raw materials supplied by the principal plus the conversion charges or job charges incurred by the job worker plus his profit margin. The margin of the principal on those goods manufactured by the job worker even if he merely traded in those goods was not to be subjected to duty of excise. But this position underwent a change from 01.04.2007 because

of an amendment to the Central Excise Valuation (Determination of Price of Excisable Goods) Rules 2000. A new Rule 10A was inserted in the said Rules which stipulates that where the goods are sold by the principal manufacturer from the factory of job worker, the value would have to be the transaction value of the goods so sold by the principal manufacturer. This will apply only when the principal manufacturer and the buyer of the goods are not related and price is the sole consideration for the sale and the goods are sold for delivery at the time of removal from the job worker's factory.

Example: - Let the value of raw materials supplied by principal be Rs. 10000 and the job workers conversion cost be Rs. 1500 and his profit margin be Rs. 500. If the principal sells the goods processed by the job worker at Rs. 15000 per unit, what is the assessable value for the job worker?

Answer: - As per the decision in Ujagar Prints case, the assessable value for charging duty of excise would have been Rs. 12000. This method would hold good till 01.04.07. Presently, by virtue of Rule 10A introduced as aforesaid, the assessable value for the job worker would not be Rs. 12000 but would be Rs. 15000 (that is the price charged by the principal for sale of the processed goods).

In a case where the goods are not sold by the principal manufacturer at the time of removal of goods from the factory of job-worker, but are transferred to some other place from where the said goods are to be sold after their clearance from the factory of the job worker, the normal transaction value of such goods sold from such other place at or about the same time has to be adopted. This, in other words follows the principle of depot based valuation under Central Excise applicable where goods are cleared to depots of manufacturers and sold therefrom. Where such goods are not sold at or about the same time, then the normal transaction value of such goods at the time nearest to the time of removal of said goods from the factory of job-worker, is to be adopted. The cost of transport from the premises where from the goods are sold, to the place of delivery, would not be included in assessable value.

Precautions to be taken by the principal manufacturer generally

The principal manufacturer is responsible for the duty payment on the scrap generated at the job worker’s premises. The job worker may also remove such scrap on payment of appropriate duty of excise and in which case principal manufacturer will be relieved from his duty liability. The principal manufacturer should therefore have a proper mechanism for the purpose of tracking the quantum of waste or scrap generated at the job worker's premises.

Take away for readers

- Clearance of goods to job workers under Not.214/86, does not amount to removal of exempted goods, and provisions of Rule 6 (proportionate reversal) of Cenvat credit rules, 2004 does not apply.
- When working under Notification no. 214/86 where the principal is paying the duty, the job worker is eligible for the credit on inputs used in processing the goods sent back without payment of excise duty or service tax.
- The treatment of scrap arising at the job workers end many a time creates disputes and therefore needs to be properly accounted.
- Many times the mould, tools and dies which can be quite expensive are lying unreturned at the job worker promises much after the job work has been discontinued.
- It maybe preferable that the job worker pays the service tax by utilising the credit on capital goods, input and input services, especially where there is credit available significantly at job workers end.